 XGC

Headquarters

EMPLOYEE BULLETIN

306

19 April 1972

CIVIL LITIGATION INVOLVING VICTOR L. MARCHETTI

1. On 19 April 1972, newspapers printed the first accounts of court action against Victor L. Marchetti, a former Agency employee. This Employee Bulletin is to state the Agency's position in this matter. The facts are in public documents filed with the court, but employees are cautioned not to comment on the merits of the case while it is still under court consideration.

2. Victor Marchetti was an Agency employee from October 1955 to September 1969. He served in a number of different capacities, all of which gave him access to sensitive information. His next to last assignment was as Executive Assistant to Vice Admiral Rufus L. Taylor, then Deputy Director of Central Intelligence. In this assignment he had access to especially sensitive information pertaining to all aspects of the Agency's activities.

3. Mr. Marchetti's entry on duty followed normal procedures, including the signing of a Secrecy Agreement. During his employment he signed additional Secrecy Agreements pertaining to special categories of information. Upon resignation he signed the regular secrecy oath form. These undertakings are conditions of employment and, therefore, integral parts of his contract of employment. He undertook never to disclose classified information, intelligence, or knowledge except in the performance of his official duties and when specifically authorized in writing in each instance by the Director of Central Intelligence or his designated representatives.

4. After his resignation in 1969, Mr. Marchetti wrote a book called The Rope Dancer, which was published in the fall of 1971. This book is not at issue in the present proceeding, as it did not specifically disclose classified information. However, in connection with the publicity attendant on publication of the book, Mr. Marchetti had numerous TV and radio interviews. While these interviews were ostensibly to discuss and promote the book, more and more they included discussions of the Agency, its functions, and its role in Government, about which Mr. Marchetti was increasingly critical. Such criticism in itself is not at issue in the present action, except in instances where it was supported by Mr. Marchetti's discussion of specific items which were classified. Instances of this sort, while of concern, were not considered sufficiently important to warrant recourse to the courts, but they did evidence an intent to make ever freer revelations.

5. In March 1972 the Agency received a copy of an article written by Mr. Marchetti which he had submitted to a national periodical for publication. The article included classified information which had never before been made public and which could have been known to Mr. Marchetti only by reason of his Agency employment. It was accompanied by the outline of a book which Mr. Marchetti proposed to write as a factual nonfiction criticism of the Agency. The book outline also proposed to discuss classified information. On careful analysis, it became clear that the publication of this classified information would have serious and immediate impact on intelligence sources and methods and international relations. It was obvious that efforts had to be made to prevent these revelations, particularly in view of the Director's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure.

6. Because criminal prosecution comes after the event, it would fail to protect the information involved. Court action to compel Mr. Marchetti to comply with his contractual undertaking to protect classified information, therefore, was deemed more appropriate. The Department of Justice agreed and prepared a case seeking a Federal court injunction to enforce the contractual undertaking. For such action to be effective, the Department of Justice felt it would be necessary to obtain court action before notification to Mr. Marchetti. The Federal Rules of Procedure provide for doing this through a temporary restraining order. The Judge signed an order on 18 April 1972 which had been submitted by the Department of Justice. A sealed exhibit was also submitted which described the nature of the damage which would be done by publication of the magazine article. The order, which is good for only 10 days, was served on Mr. Marchetti on 18 April 1972 and the Judge set the time for a hearing on the preliminary injunction for 28 April 1972. This gives Mr. Marchetti time to obtain legal advice and prepare his defense. Such a hearing will be in open court except for the treatment of the sealed exhibit, which will be considered in the privacy of the Judge's chambers.

7. If a preliminary injunction and then a permanent injunction are obtained, they will apply only to the information covered by the contract of employment. Mr. Marchetti will be free to write fiction or factual criticism of the Agency provided he does not use in such articles or interviews classified information which has not been cleared for such use by the Agency.

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Headquarters

EMPLOYEE BULLETIN

#309

26 April 1972

CIVIL LITIGATION INVOLVING VICTOR L. MARCHETTI

1. As noted in the Employee Bulletin of 19 April 1972 on the Victor L. Marchetti case, the temporary restraining order was signed by Judge Albert V. Bryan, Jr., on 18 April 1972. Since that time, counsel for Mr. Marchetti have made various moves to try to have the restraining order dissolved. The Circuit Court of Appeals has refused to take the appeal on this aspect.

2. The problem which most concerns the court now is how to deal with classified evidence which is currently under seal and, therefore, not available to anyone without security clearance. After discussions with the court, four defense counsel have now been cleared for access.

3. The importance of the sealed exhibit is that it contains a classified memorandum analyzing certain writings done by Mr. Marchetti and describing in detail why some of his disclosures would have an immediate and serious impact on intelligence sources and methods or on international relations. This document is of necessity classified Secret. Having inspected it, Mr. Marchetti's counsel now states he wishes to discuss it with prospective witnesses. The Government offered to clear such witnesses if they were clearable and given access on the same terms as those for defense counsel. Upon objection by defense counsel the court asked why this would not serve, and counsel stated that he did not wish to give CIA the names of prospective witnesses as this might enable CIA to affect their testimony.

4. The Circuit Court has now ruled that only witnesses who can be cleared will have access to the sealed exhibit and that the Department of Justice has represented to the court that CIA will have no contact with prospective witnesses or try in any way to influence their position.

5. If an Agency employee receives a communication of any sort from a person identified as a prospective witness, he must state that under directions from the court he cannot discuss the case in any manner and that the prospective witness must have no further contact with the Agency or with any of its employees. The Agency employee must also immediately inform the Office of the General Counsel of such communication.

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EMPLOYEE BULLETIN

#312

ORIGINAL COPY

23 May 1972

CIVIL LITIGATION INVOLVING VICTOR L. MARCHETTI

1. The opening developments in the case of Victor L. Marchetti were described in Employee Bulletins of 19 April and 26 April at which point a Temporary Restraining Order was still in effect preventing Mr. Marchetti from discussing or publishing on the subject of intelligence without clearance from the Agency. A hearing was held before Judge Albert V. Bryan, Jr., in the United States District Court, Alexandria, Virginia, on 15 May 1972 as a basis for determining whether a preliminary injunction and a permanent injunction should replace the Temporary Restraining Order. Two witnesses appeared for the Government.

2. Mr. Osborn, Director of Security, testified concerning Mr. Marchetti's appearances on radio and TV subsequent to the publication of his novel, The Rope Dancer. Mr. Osborn identified specific items mentioned by Mr. Marchetti in those appearances which were classified. The purpose of this testimony was to show a course of action on the part of Mr. Marchetti indicating a willingness to discuss information pertaining to the Agency without prior clearance but this testimony was for this purpose only and was not the information on which the Government relied in requesting the injunction. Such reliance was placed on the affidavit of Mr. Karamessines, Deputy Director for Plans, which described the immediate impact on intelligence sources and methods and international relations which would result from the publication of Mr. Marchetti's article, "Twilight of the Spooks." This had been submitted by Mr. Marchetti's own admission to six publishers as well as ESQUIRE without clearance by the Agency. Mr. Karamessines testified in closed court in further development of the argument that grave damage would be done by such publication.

3. The reason for presenting this evidence arose out of the fact that the normal remedy for breach of contract is an award of monetary damages. Mr. Karamessines' evidence was designed to demonstrate that financial compensation was completely inadequate and justified the unusual remedy of equitable relief through an injunction.

4. Defense counsel tried to cross-examine both Mr. Osborn and Mr. Karamessines to demonstrate that the classifications were erroneous and the damage which would be done by the article submitted for publication was not as serious as asserted by Mr. Karamessines. The judge refused to permit questioning on either point and his ruling, therefore, effectively prohibited the defense from calling witnesses they said were available who would attack the validity of the classification and the assertions of damage.

5. Defense counsel put Mr. Marchetti on the stand as the only defense witness. He made a statement saying his purpose in talking and writing about intelligence was to criticize certain aspects of U. S. Government intelligence activities as he felt from his employment he was in a position to talk authoritatively on the subject. On cross-examination he admitted signing the secrecy agreements, that some of the information he had used was obtained while he was employed by CIA, and that he had not submitted to the Agency his published novel nor the article which he had given to the various publishers.

6. At the end of the hearing, Judge Bryan issued a preliminary injunction giving defense time to furnish certain information they wanted to get into the record for appeal. On 19 May, Judge Bryan issued a permanent injunction accepting the Government's theory that Mr. Marchetti had contracted not to publish on the subject of intelligence without clearance with the Agency as to classified information. In the event Mr. Marchetti did not comply he could be held in contempt of court and fined or imprisoned. If he complies and submits his writings to the Agency, only classified information therein can be prohibited and he is free to publish whatever criticism he wishes subject to that restriction.

7. Mr. Marchetti has filed notice of appeal in the Circuit Court of Appeals for the Fourth Circuit. Oral argument thereon is now set for 31 May 1972 in Baltimore, Maryland.

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EMPLOYEE BULLETIN
#325

13 September 1972

CIVIL LITIGATION INVOLVING VICTOR L. MARCHETTI

1. The Circuit Court of Appeals for the Fourth Circuit on 11 September affirmed the trial court's decision requiring Mr. Marchetti to comply with the terms of his secrecy agreement with CIA.

2. The opinion states as follows:

Conclusion

> For the stated reasons, our conclusion is that the secrecy agreement executed by Marchetti at the commencement of his employment was not in derogation of Marchetti's constitutional rights. Its provision for submission of material to the CIA for approval prior to publication is enforceable, provided the CIA acts promptly upon such submissions and withholds approval of publication only of information which is classified and which has not been in the public domain by prior disclosure.

3. This is the first judicial recognition and enforcement of the Agency's secrecy agreement, the validity of which the Court accepted as needed to carry out the Director's responsibility for the protection of intelligence sources and methods. The technical requirement for Mr. Marchetti to submit his manuscript for review by the Agency prior to publication, however, does not prevent him from writing critical articles about the Agency, nor has the Agency ever contended that it would or should.

4. Mr. Marchetti may now appeal the case to the U. S. Supreme Court. The steps required to have a case heard by the Supreme Court are quite involved, and we are not able to predict whether the Supreme Court will grant the necessary writ of certiorari.

Supreme Court rejused cert on Dec 11, 1972

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Ser: 7533

13 SEP 1972

MEMORANDUM FOR THE LEGAL ADVISOR AND LEGISLATIVE ASSISTANT TO THE CHAIRMAN, JOINT CHIEFS OF STAFF

Subj: Restraining order in Marchetti case

Ref : (a) Legal Adviser to Chmn, JCS, memo of 12 June 1972 to JAG

1. Reference (a) requested comments on the use of secrecy agreements in contracts with intelligence specialists in DoD similar to those considered in the Marchetti case which was attached.

2. The Marchetti case involved a former Central Intelligence Agency (CIA) employee who had signed a "secrecy agreement" upon application for CIA employment, signed a second such agreement upon entering his employment, and signed a "secrecy oath" upon termination of his employment. The first document provided for the confidentiality of the employment process. The latter two documents contained the provision, in general terms, that he would not divulge or reveal any classified information, intelligence, or knowledge, except in the performance of his official duties and the laws of the United States, without the express written consent of the CIA. Marchetti, thereafter, authored an article entitled "Twilight of the Spooks" and signed a contract for its publication without permission from the CIA. The United States brought an action to enforce specific performance of the secrecy agreement.

3. In arriving at the conclusion that Marchetti's employment contract constituted a relegation or waiver of his First Amendment rights, the judge cited no authority. An individual may waive various constitutional rights, subh as the right against self-incrimination, the right to a trial by jury, and the right to demand the issuance of a search warrant. The fundamental rights secured by the First Amendment, however, are not traditionally viewed as rights which may be similarly "waived" by the individual. According to the great weight of authority, the First Amendment does not establish an absolute right, but, rather, its protection is dependent upon the circumstances surrounding the conduct in question such as time, place, and subject matter. In the context of this case, those circumstances include public employment conditioned upon the execution of the secrecy agreements. The adage that one has no constitutional right to public employment, is still cited for the general proposition that an individual must comply with the employment terms established by the Government. Yet, the thrust of that adage has been seriously qualified by various decisions holding that those terms must be reasonable and nondiscriminatory. [See Baggett v. Bullitt, 377 U.S. 360, 380 (1964); Cramp v. Board of Pub. Instruction, 368 U.S. 278, 284 (1961); Slochwer v. Board of Higher Educ.,

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350 U.S. 551, 555 (1956); Wieman v. Updegraff, 344 U.S. 183, 191-192 (1952); Schultz v. Palmberg, 317 F.Supp. 659 (D. Wyo. 1970); Norton v. Blaylock, 285 F.Supp. 659 (W.D. Ark. 1968); Parker v. Board of Educ., 237 F.Supp. 222 (D. Md. 1965), aff'd, 348 F.2d 464 (4th Cir. 1965), cert denied, 382 U.S. 1030 (1966).] Employment terms affecting First Amendment rights are particularly subject to divergent judicial approaches. Thus, it has been said:

> It is established by now that a State may not constitutionally impose arbitrary or discriminatory employment criteria and may not in general condition public employment upon the willingness of an employee or would-be employee to forego the exercise of rights protected by some of the first ten amendments to the Constitution as brought forward into the 14th Amendment. (Norton v. Blaylock, supra at 662.)

On the other hand, it has also been said:

> No unconstitutionality results where the right of free speech is reasonably curtailed as a prerequisite to continued government employment. (Parker v. Board of Educ., supra at 229; see also Schultz v. Palmberg, supra at 664.)

Use of the secrecy agreements can be regarded to be consistent with the above-cited cases if they are upheld as a reasonable means for the accomplishment of a legitimate objective. Disclosure of classified information concerning national security or classification procedures would obviously be detrimental to the public interest under certain circumstances, and the secrecy agreements can reasonably be viewed as an appropriate measure intended to avoid such compromises.

4. In this respect it was held that the First Amendment does not protect a Federal employee against removal from employment for violating the confidentiality of department records. [Innarelli v. Morton, 327 F.Supp. 873 (E.D. Penn. 1971).] Accordingly, it is considered that a viable legal argument is available in support of the use of secrecy agreements. As a caveat, however, it is impossible to predict whether the rationale of the Marchetti opinion will be uniformly adopted and whether such agreements would be enforced under all circumstances.

5. Some general comments on the structuring of the proposed secrecy agreements are considered appropriate.

a. Since the secrecy agreements are intended to restrict the speech of Federal employees, it is imperative that they narrowly define the prescribed activity with as much precision as feasible. In considering language used in loyalty oaths, required as a condition precedent to Government employment, the Supreme Court has emphasized that such provisions must contain "terms susceptible of objective measurement," expressing an ascertainable standard

of conduct. (See Baggett v. Bullitt, supra; Cramp v. Board of Pub. Instruction, supra.) The agreements set forth in the subject opinion appear to be sufficiently definitive.

b. Since the law of contracts is involved, it should be noted that the "secrecy oath" executed upon termination of employment, as set forth at pages 3 through 5 of the Marchetti opinion, would not by itself impose any contractual obligation upon the employee. The Government does not offer any consideration in return for the promises made by the employee in that oath, and in the absence of any quid pro quo, those promises would not be enforceable. The "secrecy agreements," set forth at pages 2 and 3 of subject opinion, do establish an enforceable obligation upon the employee since the consideration for employment and his employment was, in fact, conditioned upon compliance with those provisions. Accordingly, primary attention should be directed to those agreements. The secrecy oath or a similar document, however, may be used as an advantageous means to confirm the employee's recognition of the obligations which he did assume upon the execution of the agreements.

c. As a final note, there is no compelling legal reason to include a subscription to an oath in any of the documents set forth in subject opinion. Execution by signature alone is adequate.

6. According to informal communications with the U. S. Attorney's Office in Alexandria, an appeal of the permanent injunction granted in subject case has been docketed.

STAT

Captain, JAGC, U. S. Navy
Assistant Judge Advocate General
(Civil Law)

Prepared by:
[redacted]
Rm. 2511--ARLX--Ext. ~~43555~~ 45267
8 September 1972

STAT

OGC

8 SEP 1976

MEMORANDUM FOR THE DEPUTY TO THE DCI FOR THE INTELLIGENCE COMMUNITY

SUBJECT: Scope of the Term Sources and Methods as Employed in the Secrecy Agreement Requirement in Executive Order 11905

1. Pursuant to your request, please find attached a summary of the Department of Defense position on the legal and practical considerations involved in the question of whether secrecy agreements should encompass all sources and methods or just classified sources and methods. This has been prepared at our request by the Defense Intelligence Agency General Counsel.

2. I have taken the liberty of preparing a proposed draft of a letter from you or the Director of Central Intelligence to the Attorney General requesting his opinion in this matter to which can be appended the respective Department of Defense and Central Intelligence Agency positions on this question.

STAT (signed) [redacted]

Enclosures a/s

STAT [redacted]:smc:2 Sept 76:DIAGC:73945

OSD Record Copy
Signer's Copy
DIA CS Comeback Copy w/o Encls.
DIA File Copy
DIA GC Chron Copy

RETURN FOR FILING
TO DIA GENERAL COUNSEL

WASHINGTON, D.C. 2030

U-266/AGC

8 September 1976

MEMORANDUM OF LAW FOR THE DEPUTY TO THE DCI FOR THE INTELLIGENCE COMMUNITY

SUBJECT: Department of Defense Position on the Scope of the Term Sources and Methods as Employed in the Secrecy Agreement Requirement in Executive Order 11905

The Department of Defense (DoD) takes the position that the term intelligence sources and methods as employed in paragraph 7. of Executive Order (E.O.) 11905 must be read to refer only to classified intelligence sources and methods for the following reasons:

1. The U.S. Court of Appeals for the 4th Circuit opinion in the Marchetti case is construed to stand at least in part for the proposition that only classified intelligence information containing sources and methods is protectable under a secrecy agreement because of the First Amendment rights of the U.S. Constitution and only classified intelligence information containing sources and methods would be protectable from publication by judicially imposed restraint. The opinion of the Circuit Court provided in part:

> "As we have said, however, Marchetti by accepting employment with the CIA and by signing a secrecy agreement did not surrender his First Amendment right of free speech. The agreement is enforceable only because it is not a violation of those rights. We would decline enforcement of the secrecy oath signed when he left the employment of the CIA to the extent that it purports to prevent disclosure of unclassified information, for, to that extent, the oath would be in contravention of his First Amendment rights.
>
> Thus, Marchetti retains the right to speak and write about the CIA and its operations, and to criticize it as any other citizen may, but he may not disclose classified information obtained by him during the course of his employment which is not already in the public domain."

2. The fact that several U.S. District Courts may be willing to allow withholding of unclassified intelligence information containing sources and methods when requested pursuant to the Freedom of Information Act (5 U.S.C. 552) is not considered sufficiently persuasive authority to support an assumption that the same reasoning would be accepted in the pre-publication restraint context especially in view of the Supreme Court's historical reluctance to allow any pre-publication restraint. (See generally New York Times Co. v. United States, 403 U.S. 713).

The opinion opened as follows:

> "We granted certiorari in these cases in which the United States seeks to enjoin the New York Times and the Washington Post from publishing the contents of a classified study entitled "History of U.S. Decision-Making Porcess on Viet Nam Policy." POST, pp. 942, 943.
>
> 'Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.' BANTOM BOOKS, INC. v. SULLIVAN, 372 U.S. 58, 70 (1963); see also NEAR v. MINNESOTA, 283 U.S. 697 (1931). The Government 'thus carries a heavy burden of showing justification for the imposition of such a restraint.' ORGANIZATION FOR A BETTER AUSTIN v. KEEFE, 402 U.S. 415, 419 (1971). The District Court for the Southern District of New York in the NEW YORK TIMES case and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit in the WASHINGTON POST case held that the Government had not met that burden. We agree."

Mr. Justice White, in a concurring opinion, summed up the essence of this case as follows:

> "The Government's position is simply stated: The responsibility of the Executive for the conduct of the foreign affairs and for the security of the Nation is so basic that the President is entitled to an injunction against publication of a newspaper story whenever he can convince a court that the information to be revealed threatens 'grave and irreparable' injury to the public interest; and the injunction should issue whether or not the material to be published is classified, whether or not publication would be lawful under relevant criminal statutes enacted by Congress, and regardless of the circumstances by which the newspaper came into possession of the information.
>
> At least in the absence of legislation by Congress, based on its own investigations and findings, I am quite unable to agree that the inherent powers of the Executive and the courts reach so far as to authorize remedies having such sweeping potential for inhibiting publications by the press."

3. The Intelligence Community has been able to live with and adhere to the idea that classification is the criteria to be employed in the protection of sensitive information and any effort to seek to enhance the Government's ability to withhold additional information at this late date and in the present political climate must be approached with the utmost caution. By not appealing the U.S. Federal District Court's decision in the case of U.S. v. Jarvinen the Central Intelligence Agency (CIA)/ Director of Central Intelligence (DCI) set a precedent in 1952 which is

considered to be equally valid in 1976 and as warranting continued adherence (see Guide to CIA Statutes and Laws (1970), footnote 21 at page 16).

> "Since the intelligence source was hardly a secret one and since no classified information was involved, an appeal, risking an adverse decision in terms harmful to the exercise of the Director's responsibility to protect sources and methods in the future, was not warranted. Pardon was sought, and granted by President Truman on December 16, 1952. (The subject of the prosecution) was acquitted. United States v. Jarvinen, No. 48547, October 1952 (unpublished)."

As late as 8 March 1971 the DCI, Mr. Helms, issued a classified United States Intelligence Board memo entitled "Guidelines Governing Disclosure of Classified Intelligence, the contents of which are believed supportive of the argument that classification of sources and methods has been traditionally required in order to insure their protection.

4. The relationship between the President, National Security Council (NSC) and DCI as spelled out in the National Security Act of 1947 (50 U.S.C. 402, 403) as well as the manner in which this legislation has been implemented by practice during the last 30 years should be considered. The fact that the NSC advises the President and that the DCI is under the NSC and performs its coordination under the direction of the NSC, suggests that the DCI is subject to greater Presidential supervision and control and enjoys less independence then might appear at first blush. The DCI's responsibility for the protection of sources and methods from unauthorized disclosure is considered to carry with it, by implication, the words "as determined by the President". DoD believes that the President through the classification system, which is currently spelled out in E.O. 11652, has prescribed the exclusive system and criteria to be employed by the Executive Branch of the Government in connection with the protection of sensitive intelligence sources and methods. The President has included specific reference to intelligence sources and methods in this E.O. and is felt to have further circumscribed the DCI's responsibility in this area by the language contained in section 9 of E.O. 11652.

5. There is no question that the DCI has an administrative responsibility under the provision of the National Security Act; therefore it is considered appropriate that a Director of Central Intelligence Directive (DCID) be employed to implement the secrecy agreement provision of E.O. 11905. However it is considered vital that it be appreciated that the DCID will be applicable throughout the Executive Branch of Government and its affect will not be merely limited to laying the foundation for pre-publication judicial restraint. Rather it will be cited as the basis for imposing a condition precedent to some Federal employment, may become the basis of adverse administrative action against Federal employees and be

employed as a form of notice of the possibility of criminal prosecution. It will apply to those persons in the Federal employ who run the gamut from the unique status of those employed by CIA and the National Security Agency (NSA) through excepted service employees at such places as the Defense Intelligence Agency, regular Civil Service employees and include quite possibly some of those who are members of unions. It would also of course be binding on members of the military service. The potential problems which might arise under the varying conditions of employment of these various categories of people is not a matter which is believed to have been explored to date.

6. DoD insistence on the continued application of the classification criteria is believed to be further supported by the language in the White House proposed and Justice Department reviewed legislation amending the National Security Act of 1947 which was announced by the Attorney General at the White House Press Conference at which E.O. 11905 was made public. The language employed in the criteria describing positions of special trust in the proposed E.O. intended to replace E.O. 10450 which is currently being circulated for comment by the Office of Management and Budget also tends to support the DoD position. Both of these documents speak in terms of classified intelligence information containing sources and methods.

7. Finally, it is suggested that considerations of consistency would encourage if not dictate that the information to be protected would be so defined as to provide Government with the maximum number of possible alternatives (i.e. prior restraint, adverse administrative action, criminal prosecutions, etc.) as might be available to it under the law.

FOR THE DIRECTOR:

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[redacted]

General Counsel
Defense Intelligence Agency

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ROUTE TO		ACTION	SIGNATURE (Grade and Surname)	ORIGINATOR (Symbol)	TELEPHONE NO	DATE
1	RCI	Coord	KV Steadle, Col, USA	GC	73945	2 Sep 76
2	OSD GC (UNCODED Mr. Andrews)	Coord	RJS	ACTION OFFICER		
3	VO	Approve		SIGNATURE: Signed Below		
			STAT	TYPED GRADE AND SURNAME		TYPIST'S INITIALS: smc

SUBJECT DoD Position on the Scope of the Term Sources and Methods as Employed in the Secrecy Agreement Requirement in E.O. 11905

REMARKS

1. BACKGROUND: At a meeting of intelligence lawyers called by the DDCI at his office on Thursday, 26 Aug, Admiral Murphy decided on the recommendation of DoD that the question of whether the term sources and methods as used in E.O. 11905 included all sources and methods as advocated by CIA or only classified sources and methods as suggested by DoD, be referred to the Attorney General for his opinion before the DCID on secrecy agreements is promulgated. Admiral Murphy further indicated that he wanted both positions included in the request to the Attorney General.

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2. DISCUSSION: Attached for [redacted] signature is a memorandum to Admiral Murphy forwarding a summary of the DoD position prepared by the DIA GC at the request of OSD and a draft of a proposed letter from the DDCI to the Attorney General requesting his opinion on this question.

STAT

[redacted]
General Counsel, DIA

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